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Attorneys for Plaintiff
iTouchless Housewares & Products, Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ITOUCHLESS HOUSEWARES &
PRODUCTS, INC., a California
corporation

Plaintiff,

v.

FACTORY DIRECT WHOLESALE, LLC,
a Georgia LLC,

Defendant.

CASE No: 16-7295

**COMPLAINT FOR PATENT
INFRINGEMENT**

JURY TRIAL DEMANDED

1 Plaintiff iTouchless Housewares & Products, Inc. (“iTouchless” or “Plaintiff”)
2 hereby complains of Defendant Factory Direct Wholesale, LLC, a Georgia LLC
3 Corporation (“Defendant”) and alleges as follows:

4 **JURISDICTION AND VENUE**

5 1. This Court has original subject matter jurisdiction over the claims in this
6 action pursuant to 35 U.S.C. §§ 271 and 281 and 28 U.S.C. §§ 1331 and 1338 as these
7 claims arise under the laws of the United States.

8 2. This Court has personal jurisdiction over Defendant because Defendant has
9 a continuous, systematic, and substantial presence within this judicial district, including
10 selling and offering for sale infringing products in this judicial district, and by
11 committing acts of infringement in this judicial district, including but not limited to
12 selling infringing products directly to consumers and/or retailers in this district and
13 selling into the stream of commerce knowing such products would be sold in California
14 and this district, which acts form a substantial part of the events or omissions giving rise
15 to Plaintiff’s claims.

16 3. Venue is proper in this judicial district under 28 U.S.C. §§ 1391 and
17 1400(b).

18 **INTRADISTRICT ASSIGNMENT**

19 4. Pursuant to Civil L-R 3-2(c), assignment to any Division within the
20 Northern District of California is appropriate because this is an Intellectual Property
21 Action.

22 **THE PARTIES**

23 5. Plaintiff iTouchless is a corporation organized and existing under the laws of
24 California, having a principal place of business at 777 Mariners Island Blvd., Suite 125,
25 San Mateo, CA 94404.

26 6. Plaintiff is informed and believes, and thereon alleges, that Defendant,
27 Factory Direct Wholesale, LLC is a Georgia limited liability company having a business
28 address at 2855 N. Berkeley Lake Rd., Duluth, GA 30096.

1 7. Plaintiff is informed and believes, and thereon alleges, that Defendant has
2 committed the acts alleged herein within this judicial district.

3 **GENERAL ALLEGATIONS**

4 8. Plaintiff is engaged in the design, manufacturing, distribution, and sales of
5 innovative household products. Plaintiff is the creator of the Touchless Trashcan®, EZ
6 Faucet®, and Towel-Matic®, Sensor Soap Dispenser, and more. Plaintiff's products
7 have been designed not only to make people's daily life easier, but to provide a fresher
8 and cleaner home. Over the past 20 years, Plaintiff has been dedicated to creating unique
9 sensor activated products that are easy-to-use and promote hygiene at home.

10 9. On May 29, 2012, the United States Patent and Trademark Office
11 ("USPTO") duly and lawfully issued United States Patent No. 8,188,689 (the "'689
12 Patent"), titled "INDUCTION ACTIVATED COVER ASSEMBLY." Plaintiff is the
13 owner of all right, title, and interest in the '689 Patent, which is valid and enforceable. A
14 true and correct copy of the '689 Patent is attached hereto as Exhibit A.

15 10. Defendant manufactures, uses, sells, offers for sale, and/or imports into the
16 United States induction activated cover assemblies that infringe Plaintiff's intellectual
17 property rights, including the '689 Patent.

18 11. On September 20, 2016, Plaintiff sent correspondence notifying Defendant
19 of its potentially infringing activity with respect to the '689 Patent.

20 12. Defendant's acts complained of herein have caused Plaintiff to suffer
21 irreparable injury to its business. Plaintiff will suffer substantial loss unless and until
22 Defendant is preliminarily and permanently enjoined from its wrongful actions
23 complained of herein.

24 **FIRST CAUSE OF ACTION**

25 **PATENT INFRINGEMENT, 35 U.S.C. § 271**

26 13. Plaintiff repeats and re-alleges the allegations of paragraphs 1-12 of this
27 Complaint as if set forth fully herein.

28 14. This is a claim for patent infringement under 35 U.S.C. § 271.

1
2 15. Claim 1 of the '689 Patent recites:

3 An induction activated cover assembly, comprising:

4 a main body, having an opening vertically penetrating the main body, a rear
5 chamber being defined by the main body, a lateral connecting groove being formed
6 on a top surface of the main body, the rear chamber and the connecting groove
7 being located behind the opening, two through holes being formed on two ends of
8 the connecting groove respectively;

9 a cover, pivotably disposed on the main body to move pivotably between an
10 open position and a close position, the opening being open as the cover is at the
11 open position, the opening being closed as the cover is at the close position, a
12 lateral connecting body being formed on a rear end of the cover, the connecting
13 body having a connecting body opening facing downward, two pivot bores being
14 formed on two ends of the connecting body and corresponding to the through holes
15 respectively;

16 a covering plate, enclosing the connecting body opening, a receiving room
17 being defined between the connecting body and the covering plate;

18 two pivots, disposed in the receiving room, each pivot inserting through one
19 of the pivot bores and its corresponding through hole to pivot the cover on the
20 main body;

21 an induction unit for detecting a movement of a target body;

22 a driving unit, operatively connecting to the induction unit, the induction
23 unit selectively activating the driving unit to drive the cover to pivotably move
24 between the open position and the close position as the induction unit detects the
25 target body moving;

26 at least one resilient unit, being disposed in the rear chamber, the resilient
27 unit providing the cover with a torque force for the cover to have a tendency to
28 pivotably move to the open position.

16. Defendant, through its agents, employees, and servants has, and continues to, knowingly, intentionally, and willfully infringe the ‘689 Patent by making, using, selling, offering for sale, and/or importing induction activated cover assembly products having features that are recited by at least claim 1 of the ‘689 Patent, including, for example and without limitation, Defendant’s Model “TC-1350R” product (shown to the right) and also known as 13-Gallon Touch-Free Sensor Automatic Stainless-Steel Trash Can Kitchen 50R, as well as the following products: BestOffice Infrared Touchless Stainless Steel Trash Can, 13.2-Gallon; New White 13-Gallon Touch Free Sensor Automatic Touchless Trash Can Kitchen Office; New Red 13-Gallon Touch Free Sensor Automatic Touchless Trash Can Kitchen Office; New 13 and 2.4 Gallon Touch-Free Sensor Automatic Stainless-Steel Trash Can 09R; and BestOffice New 13-Gallon Touch-Free Sensor Automatic Stainless-Steel Trash Can Kitchen 50R (collectively “‘689 infringing products”).



17. Defendant has been and is currently infringing the ‘689 Patent by making, using, selling, offering for sale, and/or importing into the United States, induction activated cover assembly products.

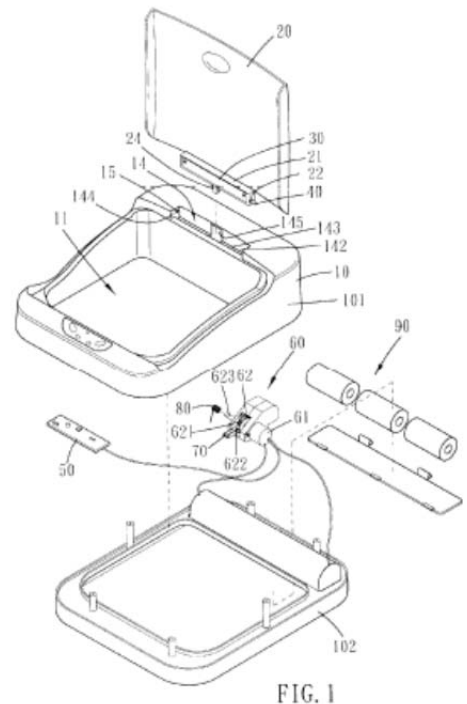
18. Defendant’s acts of infringement of the ‘689 Patent were undertaken without permission or license from Plaintiff. Defendant had actual knowledge of Plaintiff’s rights in the inventive concept claimed in the ‘689 Patent since at least September 20, 2016, on which date correspondence identifying the ‘689 Patent was sent to Defendant. Accordingly, Defendant’s actions constitute willful and intentional infringement of the ‘689 Patent. Defendant infringed the ‘689 Patent with reckless disregard of Plaintiff’s patent rights. Defendant knew, or it was so obvious that Defendant should have known, that its actions constituted infringement of the ‘689 Patent.

19. Defendant, through its agents, employees, and servants has, and continues to, knowingly, intentionally, and willfully infringe the '689 Patent by making, using, selling, offering for sale, and/or importing induction activated cover assembly products having features that are recited by at least claim 1 of the '689 Patent, including, for example, Defendant's Model "TC-1350R" product as shown below. Indeed, Defendant's product appears to be an attempt to duplicate precisely the technology disclosed in the '689 Patent as a side-by-side comparison shows:

Defendant's '689 infringing product



'689 Patent, Fig. 1



20. The '689 infringing products use infrared technology to implement an induction activated cover assembly, as identified in the User Manual for the TC-1350 product, which states: "The automatic trash bin uses infrared technology. As your hand or debris approaches the bin (about 6 inches/10 cm away) the infrared sensor on the lid [Picture 1] automatically opens the lid."

21. The '689 infringing products have a main body, with a vertical opening, as

shown below:



22. The '689 infringing products have a rear chamber being defined by the main body, as shown below:

lateral connecting groove

main body

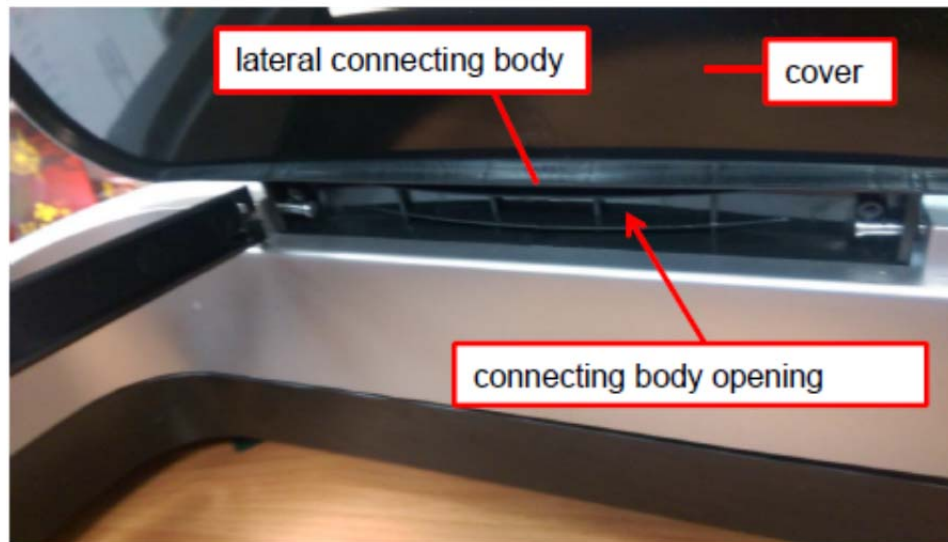
opening



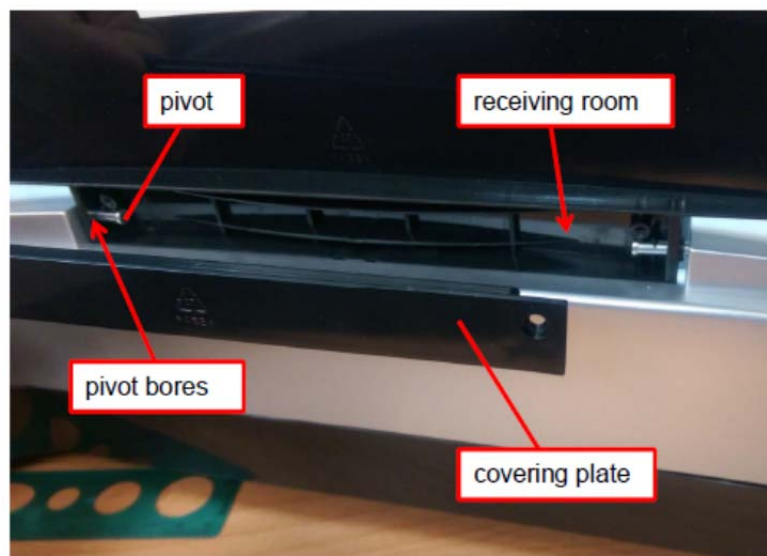
24. The '689 infringing products have a cover, pivotably disposed on the main body to move pivotably between an open position and a close position, the opening being open as the cover is at the open position, the opening being closed as the cover is at the close position, as shown below.



25. The '689 infringing products have a lateral connecting body being formed on a rear end of the cover, the connecting body having a connecting body opening facing downward, two pivot bores being formed on two ends of the connecting body and corresponding to the through holes respectively, as shown below.



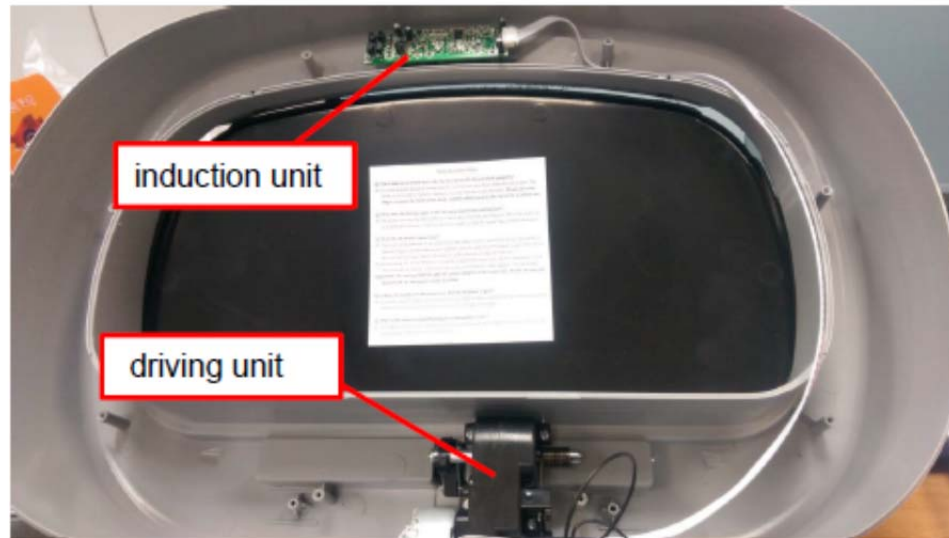
26. The '689 infringing products have a covering plate, enclosing the connecting body opening, and a receiving room being defined between the connecting body and the covering plate, as shown below.



27. The '689 infringing products have two pivots, disposed in the receiving

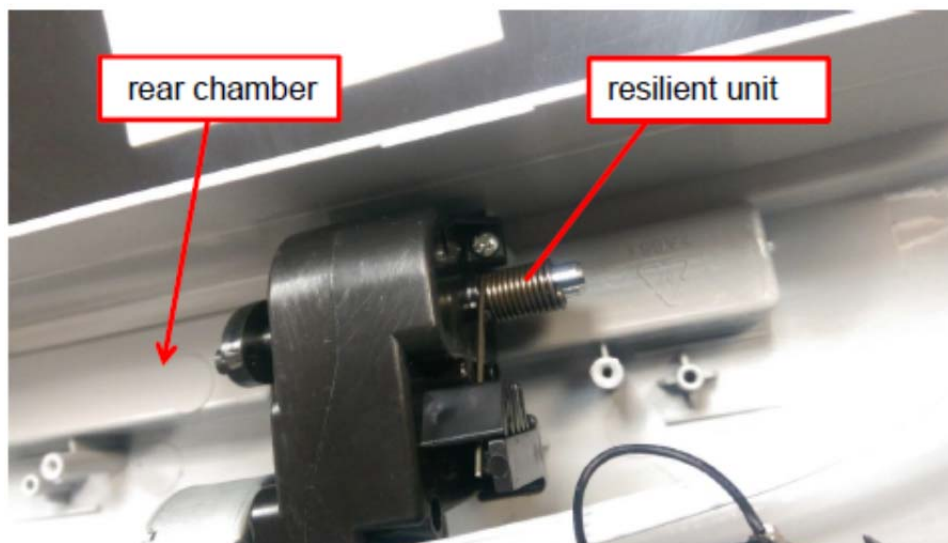
room, each pivot inserting through one of the pivot bores and its corresponding through hole to pivot the cover on the main body, as shown above.

28. The '689 infringing products have an induction unit for detecting a movement of a target body, as shown below.



29. The '689 infringing products have a driving unit, operatively connecting to the induction unit, and the induction unit selectively activates the driving unit to drive the cover to pivotably move between the open position and the close position as the induction unit detects the target body moving, as shown above.

30. The '689 infringing products have at least one resilient unit, being disposed in the rear chamber, the resilient unit providing the cover with a torque force for the cover to have a tendency to pivotably move to the open position, as shown below.



31. Plaintiff has, at all times, complied with 35 U.S.C. § 287(a) for the '689 Patent.

32. As a direct and proximate result of Defendant's acts of infringement, Defendant has derived and received gains, profits, and advantages in an amount that is not presently known to Plaintiff.

33. Pursuant to 35 U.S.C. § 284, Plaintiff is entitled to damages for Defendant's infringing acts and treble damages together with interests and costs as fixed by this Court.

34. Pursuant to 35 U.S.C. § 285, Plaintiff is entitled to reasonable attorney's fees for the necessity of bringing these claims.

35. Due to the aforesaid infringing acts, Plaintiff has suffered great and irreparable injury, for which Plaintiff has no adequate remedy at law.

36. Defendant will continue to infringe Plaintiff's patent rights to the great and irreparable injury of Plaintiff, unless enjoined by this Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment in its favor against Defendant for the following relief:

A. An Order adjudging Defendant to have willfully infringed the '689 Patent under 35 U.S.C. § 271;

B. Preliminary and permanent injunctions enjoining Defendant, its respective officers, directors, agents, servants, employees, and attorneys, and those persons in active

concert or participation with Defendant, from infringing the '689 Patent in violation of 35 U.S.C. § 271;

C. That Defendant be ordered to recall all infringing products from all distribution channels, including all retailers;

D. That Plaintiff recover compensatory damages for Defendant's infringement in an amount to be proven at trial, and in no event less than a reasonable royalty, together with prejudgment interest at the maximum legal rate;

E. An Order adjudging that this is an exceptional case;

F. An Order for a trebling of damages and/or exemplary damages because of Defendant's willful conduct pursuant to 35 U.S.C. § 284;

G. An award to Plaintiff of the attorney fees, expenses, and costs incurred by Plaintiff in connection with this action pursuant to 35 U.S.C. § 285;

H. An award of pre-judgment and post-judgment interest and costs of this action against Defendant; and

I. Such other and further relief as this Court may deem just and proper.

Dated: December 22, 2016

By: /s/ Victor de Gyarfas
Victor de Gyarfas
Attorneys for Plaintiff
iTouchless Housewares & Products, Inc.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury of all issues triable by a jury.

Dated: December 22, 2016

By: /s/ Victor de Gyarfas

Victor de Gyarfas

FOLEY & LARDNER LLP

Attorneys for Plaintiff

iTouchless Housewares & Products, Inc.